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BEFORE THE

**Federal Communications Commission**

WASHINGTON, D.C. 20554

In the Matter of

The Development of Operational,  
Technical, and Spectrum  
Requirements for Meeting  
Federal, State and Local Public  
Safety Agency Communication  
Requirements Through the  
Year 2010

WT Docket No. 96-86

DOCKET FILE COPY ORIGINAL

To: The Commission

COMMENTS  
OF THE  
THE STATE OF NEW HAMPSHIRE

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SUMMARY

The Notice of Proposed Rule Making ("Notice") adopted by the Federal Communications Commission in the above-captioned proceeding takes a useful and long overdue first step toward identifying and addressing the critical communications deficiencies that have plagued public safety entities for some time. Perhaps most significantly, the Commission recognizes in its Notice that public safety agencies have widely divergent needs and that these needs must be met promptly.

However, in light of recent unsuccessful efforts by the State of New Hampshire ("State") to obtain authorization to operate a statewide public safety communications system on VHF frequencies, the State believes that additional steps are necessary in the near term to ensure that *immediate* public safety communications requirements are being satisfied and that the Commission's practices do not undermine its stated policies. In particular, the Commission must develop clear guidelines implementing its pledge to address existing public safety spectrum shortages promptly and on a case-by-case basis. Also essential is a firm commitment to entertain on a serious level any proposals developed by public safety entities to address their own individualized needs. Otherwise, the Commission's promise to deal with the problems facing the public safety

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community may continue to amount to nothing more than hollow rhetoric for many public safety agencies.

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COMMENTS  
OF  
**THE STATE OF NEW HAMPSHIRE**

The State of New Hampshire ("State"), by its attorneys and pursuant to Section 1.415 of the Rules and Regulations of the Federal Communications Commission, hereby submits these Comments in response to the Notice of Proposed Rule Making ("Notice")<sup>1/</sup> adopted by the Commission in the above-captioned proceeding on April 5, 1996.

**I. PRELIMINARY STATEMENT**

The State of New Hampshire, like other governmental entities, relies heavily upon radio communications in its efforts to preserve and protect the safety and health of its citizens, both on a day-to-day basis and during large-scale

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<sup>1/</sup> 61 Fed. Reg. 18538 (April 26, 1996).

incidents or emergencies. As a consequence of evolving management techniques and the increasing interdependence of once separate government functions (e.g., law enforcement, fire protection, emergency response teams, etc.), there is increasing coordination between and among separate state agencies. To achieve such coordination, interoperability is essential to the communications systems serving the State's departments and agencies.

Faced with a need for a new communications system to meet its public safety and other governmental requirements, the State submitted an application to the Commission in July 1993 requesting authorization to construct and operate a statewide telecommunications system. (See Application File No. 27047-CD-P/L-94). The proposed system was designed to be used on an inter-agency basis by the Departments of Safety, Transportation, Fish and Game, and Revenue and Economic Development, and by the Office of Emergency Management and the State Executive Branch.

Before filing its application, the State devoted considerable time and resources to determining the type of communications system that best would serve the public safety needs of its citizens. During this investigation, State engineers encountered a shortage of available public safety frequencies that would be appropriate to function in New Hampshire's topologically diverse and highly forested

terrain.<sup>2/</sup> The State identified, however, certain single-channel radio common carrier VHF frequencies (152.51 MHz, 152.63 MHz and 152.69 MHz), which had become available due to the conversion by New England Telephone and Telegraph Company from low capacity, antiquated radiotelephone service to cellular service. The State requested waiver to use these channels for its statewide public safety/governmental system.

On May 3, 1996 -- *nearly three years after its application was filed* -- the Commission's Wireless Telecommunications Bureau ("Bureau") denied the State's waiver requests and dismissed the State's application.<sup>3/</sup> In so doing, the Bureau failed to give any weight whatsoever to the State's pressing public safety needs. Instead, the Bureau expressly deferred these needs to the instant rulemaking proceeding and the related efforts of the Public

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<sup>2/</sup> Approximately one-third of New Hampshire's terrain is extremely mountainous, with peaks in excess of 6,000 feet in height; in contrast, other portions of the State are at sea level. Given such variations in topography, as well as the fact that New Hampshire is the most forested of the 50 states, transmissions using the public safety frequency bands at 450 MHz or 800 MHz are inadequate to satisfy statewide public safety and other operational communications needs.

<sup>3/</sup> See In re Application of State of New Hampshire for Facilities in the Public Land Mobile Service at Various Locations in the State of New Hampshire, Memorandum Opinion and Order, File No. 27047-CD-P/L-94, DA 96-648 (May 3, 1996).

Safety Wireless Advisory Committee ("PSWAC"). The Bureau denied the State's application notwithstanding the Commission's assurance in its February 9, 1995 Report and Plan Meeting State and Local Government Public Safety Special Spectrum Needs Through The Year 2010 that, pending further provision for public safety communications, the Commission would address pressing public safety needs through waivers to use non-public safety channels.<sup>4/</sup> The Bureau also dismissed as irrelevant the State's unrefuted evidence that a 800 MHz system would entail prohibitively higher costs than a VHF system.<sup>5/</sup> Finally, the Bureau contemporaneously, without any demonstration of need and in contravention of precedent, accepted and approved a later-filed, defective application for commercial use of the requested channels.

The State has filed an Application for Review of the Bureau's denial of its application for statewide system authority. Pertinent to this rulemaking proceeding is the apparent gap between the objectives enunciated by the

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<sup>4/</sup> A more detailed discussion of the Commission's February 9, 1995 Report and Plan is set forth in Section II.A., infra.

<sup>5/</sup> The State's engineering consultants had determined that the capital equipment costs of a 800 MHz system would amount to more than double the costs of a VHF system (\$32.8 million versus approximately \$15 million). Site acquisition costs and operating costs would also be significantly higher for the 800 MHz system.



Commission in the instant Notice and fulfilling those policies and objectives, as exemplified by the Bureau's denial of the State's application.<sup>6/</sup>

## II. COMMENTS

### A. **The Commission Should Adopt Measures to Ensure that Immediate Public Safety Needs are Met as Quickly as Possible.**

In its Notice, the Commission acknowledges that "the critical responsibilities of the nation's public safety agencies require modern and innovative communications at high levels of efficiency and effectiveness." (Notice at ¶ 1). Accordingly, the Commission pledges "to address the present deficiencies in public safety wireless communications," including "lack of interoperability, minimal access to emerging technologies, limited service feature options, less than optimal transmission and reception quality, and scarce available spectrum." (Id.).

The Commission also recognizes in its Notice that many of the proposals it is offering to combat these deficiencies will not bear fruit for quite some time to come. For

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<sup>6/</sup> While comments in a rulemaking generally are excluded from the definition of ex parte communications, 47 C.F.R. § 1.1202(b), in the interests of full candor and to assure a complete record in the proceeding regarding the State's application, the State is serving these comments on the competing applicant referenced above and is submitting copies of these comments into that record as well.

instance, the Commission notes that the regulatory proceedings necessary to allocate new spectrum to public safety entities would be time consuming and, as a result, would provide no relief to "public safety agencies' more immediate spectrum needs." (Notice at ¶ 87).

Unfortunately, the Notice proposes few, if any, concrete solutions that will be available soon enough to satisfy the pressing public safety requirements of entities such as the State of New Hampshire.

The Commission undoubtedly has the ability to offer immediate assistance to public safety agencies. As a precursor to the above-captioned proceeding, the Commission issued a Report and Plan ("Report") on February 9, 1995, entitled Meeting State and Local Government Public Safety Agency Spectrum Needs Through The Year 2010. In this Report, the Commission stressed that adequate radio spectrum must be made available for the public safety community, "one of the most important users of the non-Federal radio spectrum." (Report at 11). While declining at that time to adopt additional public safety spectrum allocations (pending further analysis), the Commission confirmed that it would "handle critical [public safety] spectrum shortages on a case-by-case basis," by, for example, using "spectrum that is allocated for other services." (Report at 43).

This approach could provide immeasurable relief if it actually were followed by the Commission. Instead, however, when recently presented with precisely the type of situation that requires individualized attention (i.e., the State's application for underutilized VHF common carrier frequencies), the Commission waited nearly three years to render its decision and then explicitly refused even to address public safety considerations. To make matters worse, the Commission deferred the State's requirements to spectrum reallocation proceedings that -- as the Commission itself admits in its Notice -- cannot possibly alleviate immediate spectrum deficiencies.

What is needed here, in light of the Commission's inconsistent treatment of public safety issues, is a reaffirmation of the Commission's commitment -- as expressed in the February 1995 Report -- to addressing immediate public safety requirements on a case-by-case basis. Also necessary are specific guidelines for carrying out this commitment and provisions directing the Commission's Staff to act promptly in such instances. In addition, some form of oversight must be provided, either from within or outside of the Commission, to ensure that the Commission's day-to-day licensing decisions comply with its stated policy commitments regarding public safety requirements. Without such measures, the Commission's stated goal of alleviating

immediate public safety spectrum shortages may continue to be ignored and undermined as a matter of practice, to the serious detriment of public safety agencies and the citizens that they seek to protect.

**B. The Commission Should Support the Efforts of Public Safety Agencies to Develop Solutions that Meet Their Unique Public Safety Requirements.**

As the Commission correctly states in its Notice, "public safety agencies have a wide range of existing and future needs." (Notice at ¶ 71). Accordingly, no single approach will satisfy all public safety spectrum requirements. (Notice at ¶ 3). Rather, a number of different approaches must "be strategically combined in a way that meets the specific needs of individual public safety entities." (Id.). The State of New Hampshire believes that if the Commission sincerely desires to address the individualized and widely diverse needs of public safety entities, it must give serious consideration to specific spectrum proposals and requests presented by the parties that best understand these needs -- i.e., public safety entities themselves.

The State's request for use of VHF frequencies in the 150 MHz band was founded upon careful study and an informed determination that this was the optimal solution to its communications needs. The factors that most directly

influenced the selection of this approach were the need for interoperability between different state agencies, the unavailability of frequencies in the public safety bands that would function in New Hampshire's mountainous and extremely varied terrain and a sensitivity to financial constraints.

These factors and the route ultimately pursued by the State resonate with many of the themes that were emphasized by the Commission in its Notice. Among the Commission's principal goals in this rulemaking proceeding is to facilitate the efforts of different public safety agencies to exchange information with one another using wireless communications systems, i.e., to promote interoperability. (Notice at ¶ 21). In this regard, the Commission notes with approval that "several state and regional authorities have begun developing and deploying common user systems for public safety and public service agencies." (Notice at ¶ 32). The State of New Hampshire, too, has sought to enhance interoperability by applying for authorization to employ spectrum that is suitable for statewide communications. Notwithstanding the Commission's apparent commitment to fostering such communications, however, the Commission has rejected without any justification all of the State's efforts toward this end.

The State's decision to seek frequencies in the 150 MHz band finds further support in the sections of the Notice that address spectrum allocation options. In direct support of the State's application, the Commission acknowledges that because higher frequencies generally do not possess the long distance capability of lower frequencies, migration to higher frequency bands is not a viable option for public safety agencies that operate in rural areas. (Notice at ¶ 14). Moreover, the Commission concludes that VHF channels presently allocated for Public Mobile Service may be suitable for public safety communications. (Notice at ¶ 75). According to the Commission, these channels "may be lightly used or even unused in some regions" due to "the discontinuation of service by commercial providers who are intended users of that spectrum." (Id.). These are precisely the frequencies that the State of New Hampshire could be utilizing today to protect the life and property of its citizens, were it not for the Commission's inexplicable denial of its application and waiver requests.

The Commission also claims in its Notice that it seeks to ensure that the current and future needs of the public safety community are met "in a cost-efficient manner." (Notice at 69). Yet, in denying the State's application for VHF frequencies, the Commission gave absolutely no weight to the fact that the implementation and operation of a VHF

system would be extremely less costly to the State than any available alternative system. If the Commission's efforts to remedy the deficiencies plaguing public safety communications are to have any impact, the Commission cannot continue in this manner to turn a deaf ear to the needs and concerns presented directly to it by the public safety community.

In short, any real solution to the communications problems facing public safety entities must entail a willingness to implement the proposals crafted by these entities to meet their individual needs. Such flexibility on the part of the Commission is particularly warranted where -- as in the State of New Hampshire's case -- the proposal presented by the public safety agency is consistent with the objectives and findings set forth in the Notice and would not undermine the general purposes of the Commission's spectrum allocation rules.

### **III. CONCLUSION**

By recognizing that the vital communications requirements of the public safety community currently are not being satisfied, the Notice lays the groundwork for a much-needed overhaul of the Commission's existing approach to public safety spectrum issues. Fulfillment of the worthy

aims set forth in the Notice, however, will require not only sympathetic words, but immediate actions as well.

To meet both short and long term public safety needs, the Commission must implement a policy today that will alleviate present deficiencies while the Commission works to develop and adopt more wide-sweeping measures to provide future relief. At a minimum, such a policy should entail a firm commitment to: (1) address immediate public safety needs on a case-by-case basis; (2) allow public safety agencies to utilize spectrum allocated to other services where good cause is shown; and (3) give serious consideration to proposals developed by public safety agencies to serve their own unique requirements. There simply is no justification for the Commission to continue to put off to another day what can and should be done right now.



**WHEREFORE THE PREMISES CONSIDERED,** the State of New Hampshire respectfully submits the foregoing Comments and strongly urges the Federal Communications Commission to proceed in a manner fully consistent with the views expressed herein.

Respectfully submitted,

**THE STATE OF NEW HAMPSHIRE**

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